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RECORD OF ORAL HEARING
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JONATHAN R. MERRIL

Appeal 2008-3185
Application 09/955,939
Technology Center 2100

Oral Hearing Held: November 18, 2008

Before JAMES D. THOMAS, JEAN R. HOMERE, and STEPHEN C. SIU,
Administrative Patent Judges.

ON BEHALF OF THE APPELLANT:

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The above-entitled matter came on for hearing on Tuesday, November 18, 2008, commencing at 9:00 a.m., at The U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Dan Hawkins, Notary Public.

1 MS. BOBO-ALLEN: Calendar No. 31, Appeal No. 2008-3185.

2 Mr. Wieland.

3 JUDGE THOMAS: Thank you.

4 MS. BOBO-ALLEN: Um-hum.

5 JUDGE THOMAS: Good beginning.

6 MR. WIELAND: If you gentlemen would be so kind, I'm going to be
7 referring to the primary reference at columns 19 and 20 and to the claims,
8 and if it's all right with you, I will just proceed with the arguments rather
9 than recapping the invention or the prior art.

10 JUDGE THOMAS: Please, please do so.

11 MR. WIELAND: The fundamental difference here is the, is -- deals
12 with the idea of a live presentation. What we have is a circumstance where
13 you could walk into a lecture room, plug in your, your flash drive, present
14 your presentation with your PowerPoint slides, and the audience can walk
15 away with the disk or access it through the internet pretty much
16 immediately. It captures the live presentation.

17 The prior art is actually webcasting, so it's not actually capturing a
18 live presentation. It's facilitating a virtual presentation. So I'll try to
19 illustrate where these differences are found in the claims.

20 Turning to claim 1, we have the means for capturing during a live
21 presentation electronic still images for display by a display device, this
22 singular display device, which displays the electronic still images for
23 viewing by an audience. We would submit that this recitation is not found in
24 the prior art.

25

1 The claim rejection is under 102, so my job is to point out how those
2 recitations of claim 1 --

3 JUDGE HOMERE: So you -- counselor, are you saying the means
4 for capturing is not taught by the prior art?

5 MR. WIELAND: I am indeed.

6 JUDGE HOMERE: And why is that? Why is the means for
7 capturing -- I mean can that -- couldn't that read on a video camera, video --
8 I mean capturing a live presentation?

9 MR. WIELAND: We submit it is not, and the reason for that is
10 threefold. One is it's means for capturing means plus function language, and
11 if you look at the supporting disclosures, you will see that these are devices
12 such as a mirror that actually redirects the light beam from a slide projector
13 or other means where you are actually facilitating the display devices
14 capturing the -- what is actually being displayed, and this is important
15 because --

16 JUDGE THOMAS: But one of those embodiments disclosed is a
17 video camera.

18 MR. WIELAND: No, it's actually distinguished. The video camera
19 can take the, the live image of the presenter, but it is distinguished from the
20 means for capturing.

21 JUDGE THOMAS: Well, the, the means for capture of the slides in
22 the spec in the embodiment in figure 4 is a video camera, is it not?

23 MR. WIELAND: It -- not that I'm aware of. I mean I --

24 JUDGE THOMAS: Look at it.

25

1 MR. WIELAND: -- apologize for fumbling, but I don't remember that
2 being there. But even if it were, it would be capturing video -- I mean the
3 image of the camera, of the display device, not of the presenter.

4 JUDGE THOMAS: Figure 4 shows a digital camera on a projection
5 display, and the data is sent to the --

6 MR. WIELAND: Oh, I'm sorry, the visual --

7 JUDGE THOMAS: -- the video cable to the video capture system of
8 the computer in figure 3 which is the video capture board 302.

9 MR. WIELAND: That is, you know, that is actually a project device
10 that displays documents. Are you aware of that? It's not --

11 JUDGE THOMAS: Well, that's -- why couldn't you display a -- why
12 isn't an overhead projector using a video camera a slide?

13 MR. WIELAND: Because it's capturing -- it isn't so much the --

14 JUDGE THOMAS: But it's for a still image. It's a still image.

15 MR. WIELAND: It's not so much what the mechanism for capturing
16 the image is, because one of the other embodiments is a redirected mirror
17 that has a CCD, the core component of the video camera. What it is
18 capturing is what's important here, and that is the document or the still
19 image.

20 JUDGE THOMAS: So you're distinguishing the patentability based
21 on the content of the data?

22 MR. WIELAND: No. It's the -- what is being captured.

23 JUDGE THOMAS: Well, it seems like you can't have it both ways.

24 MR. WIELAND: I'm sorry. I'm not sure why that would be. The
25 video -- there's two different video -- abilities here, one of the lecturer. We

1 do do that, and you see that under dependent claim. Then you have capture
2 of the still images and actually is electronic still images, so we're actually
3 probably or we are limiting this to the embodiments that involve the
4 PowerPoint presentations, things like that. In the disclosure --

5 JUDGE THOMAS: Well, the reference teaches the use of
6 PowerPoint.

7 MR. WIELAND: But it does differently. You have to preload all the
8 slides into a net show server. The difference here is --

9 JUDGE THOMAS: Do all embodiments in the reference do that?

10 MR. WIELAND: Yes.

11 JUDGE THOMAS: So what language of the claim distinguishes that
12 teaching that the Examiner relies upon?

13 MR. WIELAND: Well, you have two -- or several things. One is it is
14 means plus function and that, and that is something that I think is reasonable
15 to rely on. You also have capturing electronic still images for display by a
16 display device. In the prior art, the display of the slides is distributed, is on
17 people's PCs because it's a webcast. There's also a presentation that goes on
18 in some room, some remote room where the guy is actually presenting at a
19 lectern, and there's the projection of those PowerPoints at the lectern. So if
20 you're doing a one-to-one in correspondence, the display device is the one
21 that is in the room where the person is giving the lecture. If you turn to
22 figure 9, you can see that illustrated. Taking that as the display device, you
23 will see that there is no capture of that image. What is actually going on is
24 the slides are preloaded into a net server that is remote from the lecture
25 room.

1 JUDGE HOMERE: Okay, well, turning to figure 9 -- okay, so what
2 you have, you have a presenter behind a lectern making a PowerPoint
3 presentation, right?

4 MR. WIELAND: Um-hum.

5 JUDGE HOMERE: Okay, and then you have a video camera that's
6 capturing the session?

7 MR. WIELAND: Um-hum.

8 JUDGE HOMERE: Right, okay, so are you suggesting that the video
9 camera videotaping or recording the images were projected on that screen
10 while the presenter is making the presentation is not, is not capturing still
11 images?

12 MR. WIELAND: That is correct. That is our position.

13 JUDGE HOMERE: Why not?

14 MR. WIELAND: Because it's capturing the images of the lecture, not
15 the electronic still images, and I would also point out --

16 JUDGE HOMERE: What, what is an electronic still image?

17 MR. WIELAND: The --

18 JUDGE HOMERE: So if I have a --

19 MR. WIELAND: The signal going into the display device --

20 JUDGE HOMERE: -- PowerPoint presentation, if I'm projecting
21 something on the wall here, on a screen, that's not an electronic, an
22 electronic still image?

23 MR. WIELAND: The, the entire phrase is electronic still images for
24 display by a display device. So you're capturing it before it's actually
25 displayed.

1 JUDGE HOMERE: No, no, no, no. What I'm saying is if I have a
2 projector before me and you -- or I'm standing here making a, making a
3 presentation. I have a projector before me. I'm, I'm making a PowerPoint
4 presentation. I'm projecting images, PowerPoint images onto the screen.

5 MR. WIELAND: Yes.

6 JUDGE HOMERE: My question to you is that aren't these electronic
7 still images that I'm projecting with a display device being the projector?

8 MR. WIELAND: And my answer is no, and the reason I'm saying no
9 is that the electronic still images as recited in the claims, there's electronic
10 still images for display by a display device so you're capturing --

11 JUDGE HOMERE: So the projector is not a display device?

12 MR. WIELAND: It is a display device, but we are capturing them
13 before the display device. It's, it's where it is captured in the system, so
14 you're not capturing the optical image that is being displayed. You're
15 displaying the electronic signal that is going to the display device for
16 transformation into an optical display.

17 This is, you know, you look skeptical, and I appreciate that, but this is
18 a fundamental difference. The reality of this is what you're doing here is
19 you're capturing these electronic things in a live presentation. I know you
20 guys -- I assume you gentlemen have given talks and that sort of thing, and
21 what happens all the time is the presenter comes in with his flash drive and a
22 brand-new set of slides that no one saw before as he steps up to the podium.
23 It's an enormous problem, because you can't preload them. So what happens
24 as can happen in this prior art is that the lecture is being conducted with a
25 different set of slides. That is, the live presentation and the optical capture

1 of the slides will be different than the slide presentation at the remote
2 computers on this webcast, because he has updated his slides just prior to the
3 presentation, and they didn't have a chance to upload it to the web server.
4 It's an enormous problem. It also illustrates the fundamental difference
5 between what we are doing and what the prior art is doing which is we are
6 actually capturing the live presentation, not what we expect to be presented,
7 which is what this --

8 JUDGE HOMERE: What is, what is that? What is the live
9 presentation?

10 MR. WIELAND: The guy's actual presentation as it's being displayed
11 on his PowerPoint slides and as he actually speaks. They are synchronized
12 because they are actually capturing what he is up to, what he's actually
13 doing, what is actually being done. In the prior art, you have to preload the,
14 the slides, and that makes all the difference in the world.

15 It's also -- I mean technically a webcast is not a capturing of a live
16 presentation. It's the facilitation of it, and I just harp on the idea that this is
17 also means plus function language, so we do have no equivalency, and we
18 actually pointed that out both by pointing to the specification and various
19 embodiments and saying that that is the antithesis. The whole motivation of
20 this invention is to avoid this type of system where you have to preload the
21 slides.

22 JUDGE HOMERE: Well, and -- but when you turn to claim 24 -- I
23 mean from what I understand, I mean this is a system craft that, that does not
24 require -- it's not -- format, so in that case no.

25

1 MR. WIELAND: Claim 20 has a similar distinction. You are very
2 correct in saying that the claim is different in its format, but it has the
3 capturing component configured to capture digital still image data from data
4 used to generate the still image. Now these PowerPoint slides are put on a
5 net server, so they are not used to generate the display of the PowerPoints at
6 the lectern while the still image is being displayed by the still image
7 generator. So again, the difference here is, you know, we only have to cross
8 the line because this is a 102 rejection is you are not actually capturing what
9 is going on in that projector. That projector is irrelevant to what you
10 actually put on the net show server. They may not be in harmony, and that
11 is a way to illustrate why there is a capital difference here.

12 JUDGE HOMERE: Well, figure 9 of this, of this reference here
13 shows you that you have a projector that's projecting a PowerPoint
14 presentation on that screen, and you have this video camera that's capturing
15 the session as it's occurring. So I don't understand why that would not be --
16 why the video camera itself would not be a recording device that's recording
17 images that are projected from a display device being the projector.

18 MR. WIELAND: And if the claims recited that, you would be
19 correct, but they do not. They recite captured digital still data from data
20 used to generate the still images. That would be the different part of the
21 system.

22 JUDGE HOMERE: From data --

23 MR. WIELAND: That is -- what we're capturing is the actual slides
24 in their native form, not their projected form. It's the electronic signal if you
25 will.

1 JUDGE THOMAS: So you're determining patentability on claim 1
2 for example on the word electronic.

3 MR. WIELAND: No, it's the totality. Actually you have to, you have
4 to read the entire phrase together. The means for capturing the -- during the
5 live presentation, and I think you could actually hang a hat on live
6 presentation here even though it's used in the -- means different things,
7 electronic still images, which is electronic, for display, so you're identifying
8 a position in the, in the apparatus, by a display device, that is the, the
9 electronic still images are not yet to the display device when they're being
10 captured. So you're in a different part of the system than you would be at a
11 video camera just taking an image of the overall lecture.

12 JUDGE HOMERE: So, so essentially you're, you're trying to draw a
13 distinction between the projected image which is I guess electronic data
14 versus the data at the projector?

15 MR. WIELAND: Well, and, and maybe this is -- needs reiterated but,
16 you know, the problem with what you're saying is you would have a difficult
17 time synchronizing the changeover of one electronic still image to the next.
18 If you're simply assuming that the video camera is taking the picture of a
19 PowerPoints display behind the lecturer, what is the trigger point? Where,
20 where would you be synchronizing it? There are ways to do it but, you
21 know --

22 JUDGE HOMERE: But the video camera does it for you. I mean it's
23 recording -- I mean if we -- if this session here right now is being recorded,
24 all of our interaction, everything that we're saying is going to be recorded in,
25

1 in synchronous time. I mean I don't understand why there, there would be
2 any need to synchronize it, synchronize anything.

3 MR. WIELAND: You make my point. If you're simply capturing a
4 video signal, there's only a video signal. There's no synchronization
5 involved.

6 JUDGE HOMERE: No, no, no. If you have a video camera, a video
7 camera synchronizes, records images, voices and everything that comes with
8 it.

9 MR. WIELAND: I agree, but it's just taking an image of, of an event.
10 There would be no need for synchronization, because the PowerPoints are
11 being displayed. You would not need to synchronize anything. The video --

12 JUDGE HOMERE: No, but see, that's not capturing the, the
13 presentation. It's capturing what's displayed on the screen. It's capturing
14 the, the speaker, you know, and, and the actual presentation itself, okay,
15 including the speaker, the images and, and the speech and everything else
16 that goes with it. So I don't understand why -- I mean --

17 MR. WIELAND: Well, I -- and we are misunderstanding each other,
18 because the video, you know, you get a videotape, whatever the medium is,
19 and you play the video. The video has its signal format of video and audio
20 and it's, it's a video format, right?

21 JUDGE HOMERE: Okay.

22 MR. WIELAND: So whatever is going on, whether it's PowerPoint
23 slides or the lecture or any, you know, singers, dancers, whatever is going on
24 is simply captured. They are inherently synchronized because it's a video
25 format. There is no need to automatically synchronize a changeover from

1 one electronic still image to another in the audio recording. That is, you
2 know, again it's means plus function. There would be no analogous means
3 and no need to capture it if, you know, recall too that this, you know, that the
4 overall system here permits you to view the slides with the audio in the
5 background at a later time, and so as you're, you're going through the slides,
6 you want the audio to synch up, because if they're independent of each other,
7 you would have to be guessing whether or not it was time to change a slide.
8 In a video thing, yes, you could see the video. If we were just talking about
9 a video player you would probably -- or I assume we wouldn't have a
10 patentable invention but we're not. We're talking about a means for
11 capturing, a means for recording and a means for automatically
12 synchronizing. Those three components in combination would not be found
13 in a simple video capture where you're taking a video image of a lecture.

14 And the prior art that's being applied actually also separates the
15 PowerPoint slides from the video capture even though the video is capturing
16 the lecturer, and the reason for that is multifold and in the dependent claims
17 where you talk about how you're actually capturing through OCR the, the
18 words that are on the slides, and you're also transcribing the audio and other
19 things. But those things would not be so easily done if you were just
20 capturing video because it would be -- it would probably be very difficult,
21 perhaps even impossible, to, to OCR a live video image. So those things are
22 separate --

23 JUDGE HOMERE: Counselor, do me a favor. Distinguish that from
24 I mean you know those commercial videos that they sell, for instance,
25 lecture -- there's a conference somewhere and then, and then they hire

1 companies to come out and videotape the whole session, and then they sell
2 them out. How would yours do it differently?

3 MR. WIELAND: Well, and in fact, this is commercialized, and they
4 do in fact go to conferences and capture the live presentations.

5 JUDGE HOMERE: Okay, so how, how would it be different from the
6 typical thing, the ordinary thing that we all know?

7 MR. WIELAND: The, the conventional mechanism is to videotape
8 the lecture and with of course the audio portion, separately load up the
9 slides, and then have someone manually go through and synch up the slides
10 with the video. The reason for this is you want the slides to be separate,
11 because they're easier to view. If it's part of a video screen, and you're doing
12 it over, you know, a computer or something like that, particularly if it's a
13 net -- a web access, the video is very small. You're not going to see the fine
14 parts of any slide. So you want the slides to be separated, and so what they
15 do is they manually go through, and they synchronize these things up. It
16 takes days, sometimes weeks, and so what happens is weeks after the
17 lecture, you might get a disk in the mail that captures the video. What this
18 does is does it in much faster time, almost simultaneously. That is, at the
19 end of the lecture, because of the nature of how we're capturing the video of
20 the lecture and the slides and synchronizing them together at least as to the
21 audio portion, the video portions of the dependent claim, you can actually
22 walk away from the lecture moments after it with the, the disk or whatever
23 the memory medium.

24 And you know, the miracle of this is this is done in the medical
25 industry, that's the primary thing, and that's because doctors really need that

1 information immediately, and that's what was the impetus of finding a way
2 to do this better. So you know, this -- and that's actually discussed in the
3 background section of, of the application. This is a facilitation of a webcast.
4 It's not actually capturing a live presentation. The reason we didn't argue
5 that too much is because it is an ASF signal that goes out with the HTML
6 slide commands. I've forgotten what they're called right now. But you see,
7 those things go out, and they tell people that a preloaded slide -- it's time to
8 change the slide, and so it automatically changes the slide for them. But it's
9 not a video capture technology at all really -- I'm sorry, live presentation
10 capture.

11 JUDGE HOMERE: Let's, let's turn to the, the appeal brief, the
12 summary of the invention.

13 MR. WIELAND: Okay.

14 JUDGE HOMERE: Where you provided correspondence to the
15 means plus function presentations.

16 MR. WIELAND: Um-hum.

17 JUDGE HOMERE: You said that the means for recording includes a
18 microphone as in figure 1-3, 13. You have those figures here?

19 MR. WIELAND: If you're asking me, yes. You want me to be a
20 nice --

21 JUDGE HOMERE: The means for recording here. I just had it. No?
22 The, the means for recording here. Okay, so can you point to me exactly
23 what these things are, I mean since the means plus function, so what, what
24 are the, what are the corresponding structures for this in the, in the
25 drawings?

1 MR. WIELAND: Means for recording the audio portion is simply a
2 microphone and the audio capture card.

3 JUDGE HOMERE: Okay, so you have a microphone, and then you
4 have, okay, so you have a microphone and audio capture card?

5 MR. WIELAND: Right.

6 JUDGE HOMERE: Okay, and the means for -- okay, that's, that's all
7 for the means for recording?

8 MR. WIELAND: Yeah, the audio portion is easy to record. That's
9 not a problem.

10 JUDGE HOMERE: Okay, and the video portion? What do we have?

11 MR. WIELAND: Well, the video is in a dependent claim, and I don't
12 think we brought it out, but it's, it's a video camera. So I -- it's not in the, in
13 the appeal brief. It's -- I'm sorry, it's not in the section of the appeal brief
14 that is supportive for the means, but let me find it in the claim.

15 JUDGE HOMERE: Okay, so, okay, so pretty much what we have,
16 the, the audio recording is a microphone, right, and a card?

17 MR. WIELAND: Right.

18 JUDGE HOMERE: And then the video portion is a video camera,
19 right?

20 MR. WIELAND: Well, the video portion doesn't come in until a
21 dependent claim, so I'm a little concerned. We're talking about the
22 independent claims. It is a dependent claim that we actually talk about
23 capturing the lecturer -- the presenter on video. The independent claims talk
24 about capturing the still images --

25

1 JUDGE HOMERE: Okay, we have a means for capturing a live
2 presentation, okay. So the first means is what exactly?

3 MR. WIELAND: Means for capturing during the live presentation
4 electronic still images that are -- there's multiple embodiments starting at the
5 bottom of page 2 on the appeal brief --

6 JUDGE HOMERE: Okay, so in the drawings, I mean can you point
7 to me the -- show me in the drawings. Every claim -- has to be reflected in
8 the drawings as well, so let's turn to the drawings right now.

9 MR. WIELAND: Well, I'll try to go through it quickly, because there
10 are multiple embodiments. If you look at -- I'm looking for --

11 JUDGE HOMERE: Yeah, because I mean the whole -- I think the
12 whole -- your whole argument relies on the fact that you had the 1126, all
13 right, means plus function plans. Therefore, we have to go to the
14 specifications to see exactly what these exact things, the exact structures are,
15 right?

16 MR. WIELAND: Actually I have all three points of the 1126. The
17 Examiner didn't -- the rejection didn't meet the functional language of the
18 claims as it exists.

19 JUDGE HOMERE: Okay.

20 MR. WIELAND: It's not the equivalent of the prior art --

21 JUDGE HOMERE: Exactly.

22 MR. WIELAND: -- and the third point, I apologize for fumbling
23 again --

24 JUDGE HOMERE: So let's take them point by point. So the first
25 point is what are these exact structures --

1 MR. WIELAND: Right, okay.

2 JUDGE HOMERE: -- in the drawings? So you tell me what is it
3 exactly. So in the further records here, we want to be sure that what the
4 means for capturing is exactly in the drawings so we know why the -- so we
5 know exactly where the Examiner actually found the, the corresponding
6 structures.

7 MR. WIELAND: I understand.

8 JUDGE HOMERE: Okay.

9 MR. WIELAND: It's on page 2 and 3 of the appeal brief, but going
10 through it quickly, if you turn to figure 2, you will see that there is a mirror
11 on a pivot. The mirror on the pivot is a mirror assembly 204, and the digital
12 camera or CCD 206 is used to capture the image that is actually being
13 projected out onto the screen. Actually and, you know, is connected to a
14 video capture card in 302. That's in figures 1 through 3, and you could see
15 coverage of that in page 6, lines 26 through 35, page 9, line 27 through page
16 10, line 12. Another implementation involves a VGA to NTSC kind of
17 conversion device, and you can see that with the video capture card 302 and
18 a computer system 102 in figure 3.

19 JUDGE HOMERE: Okay, so based on what you're saying here,
20 pretty much the means for capturing can be construed as, as a digital camera,
21 right, as per figure 2?

22 MR. WIELAND: You know, and that's what's in the appeal brief, and
23 I guess we'll stick with that.

24 JUDGE HOMERE: Okay, so we have a digital camera for the means
25 for capturing. Means for recording we have a microphone, right?

1 MR. WIELAND: Um-hum.

2 JUDGE HOMERE: Okay, and we have a means for synchronizing
3 them, right? And which is what now exactly?

4 MR. WIELAND: It's a time stamp. There's a -- it actually does it two
5 different ways. The computer 102 is configured to automatically detect slide
6 changes, and it's either done through the infrared controller, you know, that
7 the operator is using to change the slides or through an automatic sensing
8 algorithm where you can see the, you know, because of the color
9 differences, etc., you, you can automatically detect the changeover in the
10 slides.

11 JUDGE HOMERE: Okay.

12 MR. WIELAND: And that's at page 13, lines 21 through 24.

13 JUDGE HOMERE: Okay.

14 MR. WIELAND: But it does -- I do go back to the fundamental is,
15 you know, if you're talking about the video capture of just the presenter with
16 the PowerPoint slides in the background, we would contest that that does not
17 meet the functional language of the means plus function or the, you know,
18 the claim language.

19 JUDGE HOMERE: Okay. I mean I think now we're clear, because I
20 mean we know that the means for capturing is the video camera. The means
21 for recording is a microphone, and then you're synchronizing them, right?

22 MR. WIELAND: Um-hum.

23 JUDGE HOMERE: Okay. You have anything else?

24 MR. WIELAND: No. I thank you for your time. It's always a
25 pleasure to come.

1 JUDGE HOMERE: Okay.

2 MR. WIELAND: We -- one, one final note. I apologize for that. We
3 did separately argue claims which I didn't do here for brevity.

4 JUDGE HOMERE: Okay, sure.

5 MR. WIELAND: Okay.

6 (Whereupon, the hearing concluded on November 18, 2008.)

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